

Notice of Allowability

Application No.

09/440,106

Examiner

Robert L. Nasser

Applicant(s)

TAYLOR, CHARLES S.

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to phone conversation of 7/13/2004.
2. ☒ The allowed claim(s) is/are 32-34 38-40, and 45 (renumbered 1-7).
3. ☒ The drawings filed on 15 November 1999 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Robert L. Nasser
Primary Examiner
Art Unit: 3736

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Allen Cannon on July 13, 2004.

The application has been amended as follows:

Claims 12, 14, 24, and 37 have been canceled.

The following is an examiner's statement of reasons for allowance: During a phone conversation with Mr. Cannon on 7/13/2004, the examiner noted that the rejection to claims 12, 14, 24, and 37 would be maintained. Mr. Cannon indicated that evidence of non-obviousness might be available with regard to the Vierra/Borst rejection might be available, but that, since the case as after final, he would cancel the these claims and take the allowable claims in the interest of time.

Claims 32-34, 38-40 and 45 define over the art in that, as noted by applicant, Vierra positions the two feet prior to contacting the heart and then contacts the heart. Once in position, the feet are not adjusted. Borst is for an entirely different process (i.e. beating heart versus an arrested heart in Vierra) and therefore adds no motivation to modify Vierra.

The examiner proposed modifying Borst which has two feet on the heart to use a device like that shown in Vierra, since both devices had two feet contacting the heart.

Applicant noted that in Borst, specifically in figure 1, the coronary artery lies between the two suction paddles and the artery is unperturbed so that blood flow continues as normal. This is necessary since in Borst, the operation is on a beating heart and requires blood flow to continue. However, In Vierra, as seen on the cover figure, the coronary artery runs transverse to the paddles, as the device is intended to block the artery. Since the joint 19 is essentially in the same plane as the contact surfaces of the feet, if one were to use the device of Vierra in the method of Borst, the joint would be in contact with the coronary artery and interfere with blood flow.

In addition, applicant noted that in figure 8, Borst notes that the force applied by the paddles should be in equal and opposite directions (see arrows 40 and 41). The device of Vierra is V-shaped and therefore does not apply the same type of force. Accordingly, the potential rejection based on Borst in view of Vierra has been overcome and claims 32-34, 38-40 and 45 are allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone

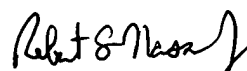
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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert L. Nasser
Primary Examiner
Art Unit 3736

RLN
July 15, 2004



ROBERT L. NASSER
PRIMARY EXAMINER